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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the State Board
of Medical Examiners

FILED

December 27, 2004

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

By: Mileidy Perez
Deputy Attorney General
Tel. (973)648-2500

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE LICENSE OF

JAMES M. MCGINNIS, D.O.
License No. ME54038

Administrative Action

CONSENT ORDER

TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information that on or about April 15, 2004, the State Medical Board of Ohio ("Ohio Board") issued a Step I Consent Agreement ("Step I Agreement") suspending Respondent's, James M. McGinnis, D.O., license to practice osteopathic medicine and surgery for an indefinite period of time, not less than ninety (90) days. By entry of the Step I Agreement, Respondent was ordered to comply with interim monitoring conditions and conditions for reinstatement established, including the requirement that Respondent enter into a subsequent consent agreement incorporating probationary terms, conditions and

CERTIFIED TRUE COPY

limitations to monitor his practice. Respondent was also ordered to maintain sobriety, attend a rehabilitation program, submit to random drug screens, and secure supervision by a physician. The disciplinary action taken by the Ohio Board was based on Respondent's admitted history of alcohol dependence and admission that on or about September 11, 2003, Respondent was convicted of Driving Under the Influence of Alcohol in violation of Ohio Revised Code Section 4511.19 in Ironton Municipal Court, Lawrence County, Ohio.

On or about July 14, 2004, the Ohio Board issued a Step II Consent Agreement ("Step II Agreement") executed by Respondent whereby Respondent was placed on probation under specific terms, conditions and limitations including, but not limited to, continued treatment, psychotherapy, monitoring and supervision. The Step II Agreement prohibits Respondent from administering, personally furnishing, or possessing any controlled substances without prior Board approval or unless "prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Respondent's history of chemical dependency." Pursuant to the Step II Agreement, Respondent is not allowed to request termination of the Agreement for a minimum of five (5) years and shall not request modification of the probationary terms, limitations and conditions contained in the Agreement for at least one (1) year.

The above criminal disposition by the State of Ohio provides ground to take disciplinary action against Respondent's license to practice medicine and surgery pursuant to N.J.S.A. 45:1-21(f), in that, Respondent has been convicted of, or engaged in acts constituting, a crime or offense involving moral turpitude or relating adversely to the activity regulated by the Board.

The above disciplinary action taken by the sister state of Ohio provides ground to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g), in that, Respondent's license to practice medicine has been suspended in another state. It appearing that Respondent wishes to resolve this matter without formal proceedings and for good cause shown,

ACCORDINGLY, IT IS on this 27th day of Dec, 2004, ORDERED AND AGREED THAT:

1. Respondent's license to practice medicine and surgery in the State of New Jersey is hereby placed on probation for a period of five(5) years. Respondent shall refrain from the practice of medicine and surgery in the State of New Jersey until he has met the requirements of this Order.

2. Respondent has represented that he is currently practicing medicine in the State of Ohio, should Respondent seek to practice in New Jersey, he shall appear before the Board or a committee thereof, to demonstrate fitness to resume practice and to

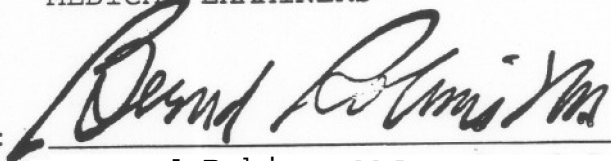
show that he has satisfied any Ohio disposition. Prior to the appearance Respondent shall enroll in the Physicians' Health Program of the Medical Society of New Jersey ("PHP") and provide at a minimum, evidence of engagement in long-term treatment program of substance abuse, a full accounting of all testing/monitoring, reports of all mental health professionals who have participated in his care and/or treatment during the period that Respondent was practicing outside of the state and a report from the PHP recommending his reinstatement and detailing the nature and extent of his involvement with that entity, if any. Respondent shall be prepared to discuss his future plans for practice and affirmatively establish his fitness, competence and capacity to re-enter the active practice of medicine and surgery in the State of New Jersey. Following its review of all the relevant documents and submissions, the Board will determine whether Respondent is physically, medically and psychologically fit to practice medicine in the State of New Jersey. Any medical practice in this State prior to said appearance and reinstatement shall constitute grounds for the revocation of Respondent's New Jersey license to practice medicine and surgery. The Board reserves the right to require Respondent's participation in such a monitoring program as it may deem appropriate.

3. Respondent shall ensure that all supervising physicians approved by the State Medical Board of Ohio provide quarterly

reports to the Board verifying compliance with the Ohio Step II
Consent Agreement entered on July 14, 2004.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By:



Bernard Robins, M.D., F.R.C.P.
Board President

I have read and understand the
within Consent Order and agree
to be bound by its terms. Consent
is hereby given to the Board to
enter into this Order.


James M. McGinnis, D.O.

11/15/94
Date

STEP I
CONSENT AGREEMENT
BETWEEN
JAMES MARTIN MCGINNIS, D.O.,
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into ~~by~~ and between James Martin McGinnis, D.O. [Dr. McGinnis], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731, Ohio Revised Code.

Dr. McGinnis enters into this Consent Agreement being fully informed of his rights under Chapter 119, Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B)(26), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731, of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth herein
- C. Dr. McGinnis is licensed to practice osteopathic medicine and surgery in the State of Ohio, License # 34-005660.
- D. Dr McGinnis states that he is ~~not~~ licensed to practice osteopathic medicine and surgery in ~~any other state or jurisdiction.~~ New Jersey and Kentucky.

- E. Dr. McGinnis admits that on or about September 11, 2003, in the Ironton Municipal Court, Lawrence County, Ohio, he was convicted of Driving Under the Influence of Alcohol, in violation of Section 4511.19, Ohio Revised Code. Dr. McGinnis further admits that during or about September 2003, he voluntarily submitted to a 72-hour chemical dependency evaluation at Shepherd Hill Hospital, a Board-approved treatment provider in Newark, Ohio, that resulted in a determination that he was alcohol dependent. Dr. McGinnis further admits that, thereafter, he continued to practice medicine until on or about December 18, 2003, at which time he voluntarily entered residential treatment for chemical dependency at the Neil Kennedy Recovery Clinic, a Board-approved treatment provider in Youngstown, Ohio.

Dr. McGinnis further admits that on or about March 8, 2004, he was contacted by telephone by one of the Board's Enforcement Attorneys, at which time Dr. McGinnis stated that he had completed only ten days of in-patient treatment at the Neil Kennedy Recovery Clinic prior to being discharged, and indicated that he had intended to independently pursue further evaluation at another Board-approved treatment provider regarding his chemical dependency status and current ability to practice medicine, but that he had not yet scheduled such evaluation. Dr. McGinnis further admits that on or about March 22, 2004, he submitted to a Board-ordered 72-hour evaluation at Shepherd Hill Hospital, which again resulted in a determination that Dr. McGinnis was impaired in his ability to practice osteopathic medicine according to acceptable and prevailing standards of care due to alcohol dependency. Dr. McGinnis further admits that on or about March 23, 2004, he reentered residential treatment at the Neil Kennedy Recovery Clinic, and that such treatment remains ongoing to date.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. McGinnis knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. McGinnis to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than ninety days.

Sobriety

2. Dr. McGinnis shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. McGinnis' history of chemical dependency.
3. Dr. McGinnis shall abstain completely from the use of alcohol.

Releases: Quarterly Declarations and Appearances

4. Dr. McGinnis shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any **and** all parties that provide treatment or evaluation for Dr. McGinnis' chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records **are** considered medical records for purposes of Section 149.43 of the Ohio Revised Code **and** are confidential pursuant to statute. Dr. McGinnis further **agrees to** provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to **agree to** or comply with any treatment contract or aftercare contract. Failure to **provide** such consent, or revocation **of** such consent, shall constitute a violation of this Consent Agreement
5. Dr. McGinnis shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating **whether** there **has** been compliance **with all** the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the **thrd** month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the sixteenth day of the month, **the** first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly **declarations** must be received in the Board's offices **on** or before the first day of every third month.
6. Dr. McGinnis shall appear in person for an interview before the full Board or its designated representative **during** the **third** month following the effective **date of** this Consent Agreement. Subsequent personal appearances must occur every **three** months thereafter, **and/or as** otherwise requested **by** the Board. **If** an appearance **is** missed or is rescheduled for **any** reason, ensuing appearances shall be scheduled **based on** the appearance **date, as** originally **scheduled**.

Drug & Alcohol Screens; Supervising Physician

7. Dr. McGinnis shall submit to random urine screenings for **drugs** and alcohol on a weekly basis or as otherwise directed by the Board. Dr. McGinnis shall ensure that all screening reports **are** forwarded directly to the Board on a quarterly **basis**. **The drug** testing panel utilized must **be** acceptable to the Secretary of the Board.

Dr. McGinnis shall abstain from consumption of **poppy** seeds or **my** other food or liquid that may produce false results in E toxicology screen.

Within thirty days of the effective date of this Consent Agreement, Dr. McGinnis shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. McGinnis shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. McGinnis. Dr. McGinnis and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. McGinnis shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. McGinnis must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. McGinnis shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. McGinnis' quarterly declaration. It is Dr. McGinnis' responsibility to ensure that reports are timely submitted.

Rehabilitation Program

8. Within thirty days of the effective date of this Consent Agreement, Dr. McGinnis shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. McGinnis shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. McGinnis' quarterly declarations.

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. McGinnis' certificate to practice osteopathic medicine and surgery until all of the following conditions are met:

- a. Dr. McGinnis shall submit an application for reinstatement, accompanied by appropriate fees, if any.
- b. Dr. McGinnis shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. McGinnis has successfully completed any required inpatient-treatment, including at least twenty-eight days of inpatient or residential treatment for chemical dependence, as set forth in Section 4731-16-08(A)(13), Ohio Administrative Code, completed consecutively.
 - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Two written reports indicating that Dr. McGinnis' ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. McGinnis. Prior to the assessments, Dr. McGinnis shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. McGinnis, and any conditions, restrictions, or limitations that should be imposed on Dr. McGinnis' practice. The reports shall also describe the basis for the evaluator's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement.

- c. Dr. McGinnis shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. McGinnis are unable to agree on the terms of a written Consent Agreement, then Dr. McGinnis further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Dr. McGinnis' certificate to practice osteopathic medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. McGinnis shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. McGinnis has maintained sobriety.

10. In the event that Dr. McGinnis has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. McGinnis' fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

11. Within thirty days of the effective date of this Consent Agreement, Dr. McGinnis shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. McGinnis further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. McGinnis shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
12. Within thirty days of the effective date of this Consent Agreement, Dr. McGinnis shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. McGinnis shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services. or applies for or receives training, and the Chief of Staff at each hospital where he applies for et obtains privileges or appointments.

The above-described terms, conditions and limitations may be amended or **terminated** in writing at any time upon the agreement of both parties.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. McGinnis appears to have violated or **breached** any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and **all** possible violations or breaches, including but not limited to, **alleged** violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. McGinnis acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a Satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. McGinnis hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. McGinnis acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

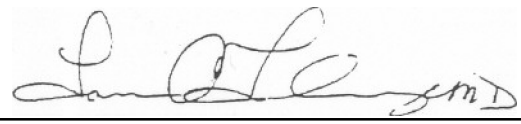
EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below


JAMES MARTIN MCGINNIS, D.O.

DATE

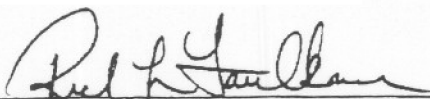
4/12/04


LANCE A. TALMAGE, M.D.
Secretary

DATE

4-14-04

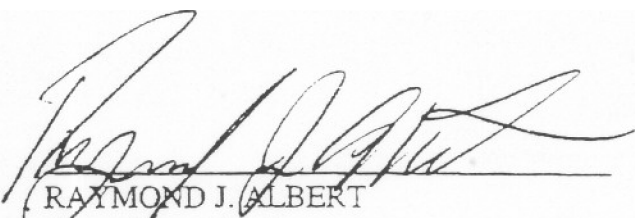
STEP 1 CONSENT AGREEMENT
JAMES MARTIN MCGINNIS, D O
?AGE 8



RICK FAULKNER, ESQ.
Attorney for Dr. McGinnrs

4/12/04

DATE



RAYMOND J. ALBERT
Supervising Member

4/15/04

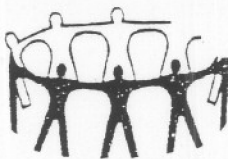
DATE



REBECCA J. MARSHALL, ESQ.
Enforcement Attorney

April 13, 2004

DATE



NEIL KENNEDY

An Affiliate of Gateway Rehabilitation Center

RECOVERY CLINIC

2151 Rush Boulevard • Youngstown, Ohio 44507-1598 • (330) 744-1181 • 1-800-228-8287 • Fax: 740-2649
NKRC Outpatient Services • Crestwood Center • 25 N. Canfield-Niles Road • Suite 140 • Austintown, Ohio 44515-2334 • (330) 792-4724 • Fax: (330) 792-1848

CONTINUING CARE CONTRACT

Client Name: JAMES MCGINNIS Phone: 740-821-0299Client Address: 8046 OHIO RIVER RD. WHEELERSBURG, OH 45684

Zip Code: _____

- ✓ 1. Abstain from alcohol and all other mood-altering chemicals.
- ✓ 2. Attend at least 3 AA/NA, and/or CA meetings per week, and actively practice the Twelve Steps of recovery.
- ✓ 3. Obtain an AA/NA, or CA home group by 7-1-04, and attend this group on a regular basis.
4. Obtain an AA/NA, or CA sponsor by 7-1-04. My sponsor will:
- a) be of the same sex as myself
 - b) will be actively involved in the Twelve Step Fellowship
 - c) will have at least 2 years of continuous sobriety from all mood-altering chemicals.
- N/A 5. Attend outpatient, continuing care counseling, and follow my counselor's recommendations:

Facility: _____

First Appointment: _____ Date _____ Time _____

Appointment is with: _____

N/A 6. Additional continuing care appointment: _____

ADDITIONAL COUNSELOR NOTATION (if any):

① MAY CONTACT TAM MARSA
OF THE COUNSELING CENTER IN PORTSMOUTH OHIO TO LOCATE
AN IMPAIRED PHYSICIANS ORGANIZATION IN THE AREA

- ② MAINTAIN MEDICATION COMPLIANCE
- ③ MAINTAIN CONTACT WITH PHT FOR ANY RECURRENT DEPRESSION

AA/NA/CA Contacts: _____

Client Signature: _____ Date: 4/24/04Counselor: Ken Stevens, PC Date: 4-26-04 4:38 PM

PROHIBITION OR RE-DISCLOSURE RULES: "This information has been disclosed to you from records whose confidentiality is protected by Federal Law. Federal regulations (42CFR part 2) prohibit you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal Rules restrict any use of information to criminally investigate or prosecute any alcohol or drug client."



An Affiliate of Gateway Rehabilitation Center

April 26, 2004

State Medical Board of Ohio
77 South High Street
17th Floor
Columbus, OH 43266-0315

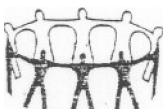
To Whom It May Concern

I have meet with James McGinnis, D.O., on April 23, 2004, for a comprehensive personal interview, review of his medical record, and perusal of **available** other documents at Neil Kennedy Recovery Clinic. Dr. McGinnis is striving-to make sure that the external circumstances of his life are arranged to foster a continuing recovery, as well as probing his internal self to verify the anchoring principles of his spiritual **and** family life. Three good indicators of recovery, which he manifests are, a commitment to follow **up** on the **formal** program, a plan to spend more quality time with his children, and a love **of** the practice of medicine. He was open and nan-guarded during our interview, and showed **an** intensity of purpose. I would not hesitate to consult him for the care of my family and myself, **and** therefore recommend him for approval of return to practice.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald Scott MD".

Dr. Ronald Scott
Neil Kennedy Recovery Clinic



2151 Rush Boulevard • Youngstown, Ohio 44507-1598
(330) 744-1181 • 1-800-228-8287 • Fax (330) 740-2849
www.nkrc.org

FAX MESSAGE**DATE: April 11, 2004****NO. OF PAGES: 9**
(including this page)

☒ ~~X~~ Original Will NOT Follow
☐ Original WILL Follow via US MAIL/HAND/OVERNIGHT

TO:

Name: James McGinnis
Organization: c/o Neil Kennedy Recovery Clinic
Attention: Keith Roberts
Fax Number: (330) 740-2849

FROM:

Name: Rick L. Faulkner, Esq.

RICK L. FAULKNER, ESQ.
KENNETH W. PORTER, ESQ., OF COUNSEL
8055 Hayport Road, CB62-13
Wheelersburg, Ohio 45694

Telephone: (740) 574-4317
Facsimile: (741) 574-1129

COMMENTS: Jim:

Please review and sign the enclosed consent agreement and fax the same to me at (740) 574-1129. Forward the original to me via Regular US Mail. I will forward a faxed copy to the Beard and advise that the executed original will follow.

NOTICE

THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL, AND IS INTENDED ONLY FOR THE USE OF THE NAMED ADDRESSEE. IF THE READER OF THIS MESSAGE IS NOT THE NAMED ADDRESSEE, OR THE PERSON RESPONSIBLE TO DELIVER IT TO THE NAMED ADDRESSEE, YOU ARE HEREBY NOTIFIED THAT ANY USE OF THIS FACSIMILE OR ITS CONTENTS, INCLUDING DISSEMINATION OR COPYING, IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY THE ABOVE, AND RETURN THE ORIGINAL TO US AT THE ABOVE ADDRESS, VIA MAIL. WE WILL REIMBURSE YOUR TELEPHONE AND POSTAGE EXPENSE FOR DOING SO. THANK YOU!

STEP II
CONSENT AGREEMENT
BETWEEN
JAMES MARTIN MCGINNIS, D.O.,
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered ~~into~~ by **and between** James Martin McGinnis, **D.O.** [Dr. McGinnis], and **the State** Medical Board of Ohio [**Board**], a state agency **charged** with enforcing Chapter 4731., Ohio Revised **Code**.

Dr. McGinnis enters into this Consent Agreement being fully **informed** of **his rights** under Chapter 119., Ohio Revised **Code**, including **the right to representation by counsel and the right** to **a** formal adjudicative hearing on **the** issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into **on** the **basis** of the following stipulations, admissions **and** understandings:

- A. The Board is empowered by Section 4731.22(B)(26), Ohio Revised *Code*, to limit, **revoke**, suspend a certificate, refuse to register or reinstate **an** applicant, or **reprimand** or place **on** probation the holder of a certificate for "impairment of **ability** to practice according to acceptable and **prevailing standards** of **care** because of habitual **or excessive** use **or** abuse of drugs, alcohol, **or** other substances **that** impair ability to practice."
- B. The **Board enters into** this Consent Agreement in **lieu** of formal proceedings 'based upon the violation of Section 4731.22(B)(26), Ohio **Revised Code**, as set forth in Paragraph **E** of the Step I Consent Agreement Between James Martin McGinnis, D.O., and the **State** Medical Board of Ohio that became effective **on April 15, 2004, [April 2004 Step I Consent Agreement]**, **a copy of** which is **attached** hereto **and** fully incorporated herein, **and as set forth in Paragraph E** herein. The Board expressly reserves the **right** to institute **formal proceedings based** upon any other violations of Chapter **4731.** of the Revised Code, whether occurring before **or after** the effective date of **this** Consent Agreement.
- C. Dr. McGinnis **is** licensed to practice osteopathic medicine and surgery **in** the State of Ohio, **License # 34-005660.**
- D. Dr. McGinnis states that he **is** also licensed to practice osteopathic medicine and surgery in the State of New Jersey, and that his license to practice osteopathic medicine and surgery in the State of Kentucky **is** presently **on** inactive status.

- E. Dr. McGinnis **admits that** on or about March **29, 2004**, he was admitted to the Neil Kennedy Recovery Clinic, a **Board-approved treatment** provider in Youngstown, Ohio, for residential **treatment** related to his alcohol dependency, **and that he was** discharged. treatment complete, on or about **April 26, 2004**. Dr. McGinnis states, and the **Board acknowledges** receipt of information to support, that since being discharged from the Neil Kennedy Recovery **Clinic**, **he has** remained compliant with his **recovery plan, including** participating in at least three AA meetings **per week** and submitting to random urine screens **on a weekly** basis. Dr. McGinnis states, and the Board acknowledges receipt of information **to support**, that Dr. McGinnis **entered into a continuing care** contract **with** the Neil **Kennedy Recovery** Clinic on or **about April 26, 2004**, **that** he thereafter transferred to an aftercare contract with **The Woods at Parkside**, a Board-approved treatment **provider** in Columbus, Ohio, on **June 25, 2004**, **and that he is in compliance with** such **aftercare** contract.

Dr. McGinnis **states**, and the **Board** acknowledges, that Edna Jones, M.D., of The Woods **at Parkside**, and **Steven A. King, M.D.**, and Ronald Scott, M.D., of the Neil Kennedy **Recovery** Clinic, have **each provided** written reports **indicating** that Dr. McGinnis's ability to practice **has been assessed and** he has **been found capable** of practicing medicine **and** surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring conditions are in **place**, including that Dr. McGinnis continue with psychiatric treatment and counseling related to his **Major Depressive Disorder**.

Accordingly, Dr. McGinnis states, and the Board **acknowledges** receipt of information to support, that Dr. McGinnis has fulfilled the conditions for reinstatement of **his** certificate to practice osteopathic medicine **and** surgery **in the State of Ohio as** established in **the April 2004 Step I Consent Agreement**.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, **and in lieu of any formal proceedings at this time**, the **certificate** of Dr. McGinnis to practice osteopathic medicine and surgery in the **State** of Ohio shall be reinstated, **and** Dr. McGinnis knowingly and voluntarily agrees **with** the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. McGinnis shall obey all federal, state, and local laws, and **all** rules governing the practice of medicine in Ohio.
2. Dr. McGinnis **shall** submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with **all** the conditions of this Consent Agreement. The first quarterly declaration **must** be received **in** the Board's offices **on the date** his quarterly declaration **would have been due pursuant to his April 2004 Step I Consent Agreement with the Board**.

Subsequent quarterly **declarations** must be received in the Board's offices **on** or before the first day of every **third** month.

3. Dr. McGinnis **shall appear in** person for an interview before the full Board or **its designated representative**. The first **such appearance** shall **take** place on the **date** his **appearance would have** been scheduled **pursuant** to his **April 2004 Step 3 Consent Agreement with the Board**. **Subsequent** personal appearances must occur **every** three months **thereafter, and/or** as otherwise requested by the Board. If **an appearance is missed or is rescheduled** for **any** reason, ensuing **appearances shall** be scheduled **based** on the appearance **date as** originally scheduled.
4. Dr. McGinnis **shall** obtain **permission** from the Board for **departures** or absences from Ohio. Such **periods of** absence **shall** not reduce the probationary term, unless otherwise determined by motion of the **Board** for **absences** of three months or longer, or by **the Secretary or the Supervising Member of the Board** for absences of less **than** three months, in instances where the Board can be **assured that** probationary **monitoring is** otherwise being performed.
5. In the **event** Dr. McGinnis is **found by** the **Secretary** of the Board to **have failed to** comply with any provision of this Consent Agreement, **and is sa notified** of that deficiency **in writing**, such period(s) of noncompliance **will not apply** to the reduction of **the** probationary period under this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. Dr. McGinnis shall **keep a log** of all controlled **substances prescribed**. Such **log shall be submitted, in the format approved** by the Board, thirty **days** prior to Dr. McGinnis' s personal **appearance** before the Board or its designated representative, or **as** otherwise directed **by** the Board. Further, Dr. McGinnis shall **make** his **patient** records with **regard to** such prescribing available for review **by an** agent of the Board upon **request**.
7. Dr. McGinnis shall not, without prior **Board approval**, administer, personally furnish, or possess (**except as allowed** undw Paragraph 8 below) **any** 'controlled substances **as** defined by **state or federal law**. In the event **that** the Board **agrees at** a future date to modify this Consent Agreement to allow Dr. McGinnis to administer or personally furnish **controlled** substances, Dr. McGinnis **shall keep a log** of **all** controlled substances prescribed, administered or personally **furnished**. Such log shall be submitted **in the format approved** by the Board thirty **days** prior to Dr. McGinnis's personal appearance before the Board **or** its designated representative, or **as** otherwise directed by the Board. Further, Dr. McGinnis **shall make** his **patient** records with **regard** to such **prescribing, administering, or personally furnishing** available for review **by an** agent of the Board **upon request**.

Sobriety

8. Dr. McGinnis **shall abstain** completely from the personal use or possession of **drugs**, except those prescribed, dispensed or administered **to** him **by** mother **so authorized** by law **who has full knowledge** of Dr. McGinnis's history of chemical dependency.
9. Dr. McGinnis shall **abstain** completely from the use of alcohol.

Drug and Alcohol Screens/Supervising Physician

10. Dr. McGinnis shall submit to random **urine** screenings **for drugs** and alcohol **on a weekly** basis or **as** otherwise directed by the Board. **Dr. McGinnis shall** ensure that **all screening reports** are forwarded directly to the Board on a quarterly basis. The **drug** testing panel utilized must **be acceptable** to the Secretary of the Board.

Dr. McGinnis **shall abstain** from consumption of **poppy** seeds or **any** other food or **liquid that may** produce false results in **a** toxicology screen.

Within thirty days of the effective date of this Consent Agreement, **Dr. McGinnis** shall **submit** to the Board for its prior approval the name **and** curriculum **vitae** of a **supervising physician** to whom Dr. McGinnis shall submit the required urine specimens. In **approving** an individual to serve in this capacity, the Board will give preference to a physician **who** practices in the **same** locale as Dr. McGinnis. Dr. McGinnis **and** the **supervising** physician shall **ensure** that the urine specimens **are obtained on a** random basis **and** that the giving of the specimen **is** witnessed by **a** reliable person. In addition, the **supervising** physician shall assure **that** appropriate control **over** the specimen **is** maintained **and** shall immediately inform the **Board of any** positive screening **results**.

Dr. McGinnis shall **ensure that** the supervising physician **provides** quarterly reports to the Board, in **a** format acceptable **to** the Board, **as** set forth **in** the **materials** provided by the **Board** to the supervising physician, verifying whether all **urine** screens **have been** conducted in compliance with this Consent Agreement, whether all **urine** screens have **been** negative, **and** whether the supervising physician remains willing **and** able to continue in his or her responsibilities.

In the event that the **designated** supervising physician becomes unable or unwilling to so serve, Dr. McGinnis must immediately notify the **Board** in writing, and make arrangements acceptable to **the Board** for another supervising **physician as soon as practicable**. Dr. McGinnis shall further ensure **that** the previously designated **supervising physician** also notifies the **Board** directly **of his** or her inability to continue to serve **and** the reasons therefore.

All screening reports **and** supervising physician reports required under **this** paragraph

must be received in the Board's offices no later than the due date for Dr. McGinnis's quarterly declaration. It is Dr. McGinnis's responsibility to ensure that reports are timely submitted.

11. The Board retains the right to require, and Dr. McGinnis agrees to submit, blood or urine specimens for analysis at Dr. McGinnis's expense upon the Board's request and without prior notice. Dr. McGinnis's refusal to submit a blood or urine specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

Psychiatric Treatment

12. Within thirty days of the effective date of this Consent Agreement, Dr. McGinnis shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. McGinnis shall undergo and continue psychiatric treatment, to include individual psychotherapy, at least once every four weeks, or as otherwise directed by the Board. Dr. McGinnis shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered by his approved treating psychiatrist for his psychiatric disorder.

Dr. McGinnis shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. McGinnis's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. McGinnis's compliance with his treatment plan; Dr. McGinnis's mental status; Dr. McGinnis's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. McGinnis shall ensure that his treating psychiatrist immediately notifies the Board of his failure to comply with his psychiatric treatment plan and/or any determination that Dr. McGinnis is unable to practice due to his psychiatric disorder.

The psychotherapy required pursuant to this paragraph may be delegated by Dr. McGinnis's treating psychiatrist to an appropriately licensed mental health professional approved in advance by the Board, so long as Dr. McGinnis treating psychiatrist oversees/supervises such psychotherapy; includes information concerning Dr. McGinnis's participation and progress in psychotherapy in his or her quarterly reports; and continues to meet personally with Dr. McGinnis at least once every three months. Should the psychotherapy required pursuant to this provision be delegated to a licensed mental health professional, Dr. McGinnis shall ensure that psychotherapy reports are forwarded by his treating licensed mental health professional to the Board on a quarterly basis, or as otherwise directed by the Board. The psychotherapy reports shall contain information describing Dr. McGinnis's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. McGinnis compliance with his treatment plan; Dr. McGinnis's mental status; Dr. McGinnis's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. McGinnis shall ensure that his treating licensed

mental health professional immediately notifies the Board of his failure to comply with his psychotherapy treatment plan and/or any determination that Dr. McGinnis is unable to practice due to his psychiatric disorder. These psychotherapy reports shall be in addition to the psychiatric reports.

It is Dr. McGinnis's responsibility to ensure that all quarterly reports (psychiatric and psychotherapy, if applicable) are received in the Board's offices no later than the due date for Dr. McGinnis's quarterly declaration.

In the event that the designated treating psychiatrist and/or treating licensed mental health professional becomes unable or unwilling to serve in this capacity, Dr. McGinnis must immediately so notify the Board in writing. In addition, Dr. McGinnis shall make arrangements acceptable to the Board for another treating psychiatrist and/or treating licensed mental health professional within thirty days after the previously designated treating psychiatrist and/or treating licensed mental health professional becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. McGinnis shall ensure that the previously designated treating psychiatrist and/or treating licensed mental health professional also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

Monitoring Physician

13. Before engaging in any medical practice, Dr. McGinnis shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. McGinnis and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. McGinnis and his medical practice, and shall review Dr. McGinnis's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. McGinnis and his medical practice, and on the review of Dr. McGinnis's patient charts. Dr. McGinnis shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. McGinnis's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. McGinnis must immediately so notify the Board in writing. In addition, Dr. McGinnis shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. McGinnis shall ensure that the previously

designated monitoring physician also **notifies** the Board directly of his or her inability to continue to serve **and** the **reasons** therefore.

Rehabilitation Program / Aftercare

14. Within **thirty days** of the effective date of this Consent Agreement, Dr. McGinnis shall ~~undertake~~ **and** maintain participation in an alcohol and drug rehabilitation program, such as **A.A., N.A., C.A.,** or Caduceus, no less than three times per **week**. Substitution of any other specific **program** must receive **prior Board approval**.

In addition, Dr. McGinnis shall attend a minimum of one aftercare meeting per week, which shall be **in addition** to his ~~participation~~ in an alcohol and **drug** rehabilitation program ~~as~~ **required above**. In the ~~event~~ that Dr. McGinnis's ~~regular~~ aftercare meeting ~~is not held in a given week,~~ Dr. McGinnis shall **participate** in an **additional** meeting of an alcohol **and drug rehabilitation program**, such as **A.A., N.A.,** or Caduceus. Substitution of **any** other specific program must receive **prior Board approval**.

Dr. McGinnis shall submit acceptable **documentary** evidence of continuing compliance with this rehabilitation **program and** aftercare attendance which must **be received in the** Board's offices **no** later than the due date for Dr. McGinnis's quarterly declarations.

15. Dr. McGinnis shall contact an **appropriate** impaired physicians ~~committee~~, approved by the Board, to arrange for assistance in recovery or aftercare.
16. Dr. McGinnis shall maintain continued compliance with the **terms** of the aftercare **contract** entered into with his treatment **provider, provided that,** where **terms** of the aftercare contract conflict with terms of this Consent Agreement, **the terms** of this Consent Agreement shall control.

Releases

17. Dr. McGinnis shall provide continuing authorization, through **appropriate** written consent ~~forms~~, for disclosure by his treatment ~~providers~~ to the Board, to treating **and** monitoring physicians, and to ~~others~~ involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

Required Reporting by Licensee

18. Within thirty days of the effective date of this Consent Agreement, ~~Dr.~~ McGinnis shall **provide a** copy of this Consent Agreement to all employers or entities ~~with~~ which he is under contract to provide health care services or is receiving training; and the Chief of **Staff at** each **hospital** where **he** has privileges or appointments. Further, Dr. McGinnis shall provide **a** copy of this Consent Agreement to **all** employers or

entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

19. Within thirty days of the effective date of this Consent Agreement, Dr. McGinnis shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper Licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. McGinnis further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. McGinnis shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
20. Dr. McGinnis shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. McGinnis chemical dependency treatment or monitoring.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. McGinnis appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. McGinnis has violated any term, condition or limitation of this Consent Agreement, Dr. McGinnis agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

Dr. McGinnis shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. McGinnis shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. McGinnis acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.


Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.


Dr. McGinnis hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

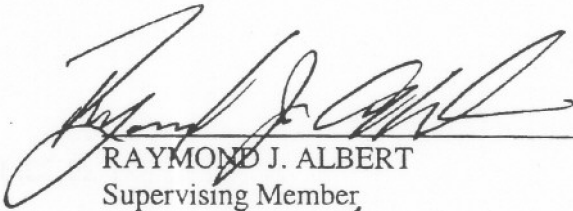
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. McGinnis acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

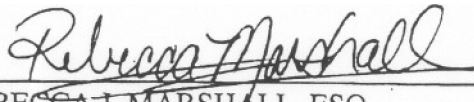
EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.


JAMES MARTIN MCGINNIS, D.O.
7/13/04
DATE


LANCE A. TALMAGE, M.D.
Secretary
7-14-04
DATE


RAYMOND J. ALBERT
Supervising Member
7/14/04
DATE


REBECCA J. MARSHALL, ESQ.
Enforcement Attorney
July 13, 2004
DATE